

**Health Care Services Group, Inc. and 1115 Florida Division of 1199, Service Employees International Union, AFL-CIO, CLC. Case 12-CA-20920**

November 20, 2000

**DECISION AND ORDER**

**BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN**

Pursuant to a charge filed on June 27, 2000, the General Counsel of the National Labor Relations Board issued a complaint on July 24, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 12-RC-8066 as amended by stipulation of the parties in 12-AC-39. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On September 29, 2000, the General Counsel filed a Motion for Summary Judgment. On October 4, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The Respondent admits that by letters dated January 21 and June 28, 2000, the Union requested that the Respondent furnish it with the following information:

1. A list of current employees, including their names, dates of hire, rates of pay, job classification, department, last known address, and phone number;

2. A copy of all current company personnel policies and procedures which relate to or have an effect on bargaining unit employees, including but not limited to, leave of absence, shifts, starting times, hiring rules, safety rules, vacation, holidays, and overtimes;

3. A copy of all company fringe benefit plans, including pension, profit sharing, severance, stock initiative, health insurance, apprenticeship, training, legal services, child care, or any other plans which relate to the employees, and where applicable, copies of summary plan descriptions for such plans;

4. Copies of all current job descriptions for bargaining unit employees;

5. Copies of any company wage and salary plans, including schedules for employees on incentive jobs;

6. Copies of OSHA 200 logs for the past three years;

7. The Cost Report files with the AHCA for the last 3 years;

8. Any and all agreements signed with all subcontractors that relate to the bargaining unit employees' jobs, wages, benefits, and working conditions.

In its answer, the Respondent admits only that "certain" of this information is necessary and relevant for purposes of collective bargaining. We find that with exception of the cost and subcontracting information requested in Items 7 and 8, the foregoing types of information are presumptively relevant for purposes of collective bargaining and must be furnished on request.<sup>1</sup> The Respondent has not attempted to rebut the relevance of the information requested in items 1-6, and we therefore find that no material issues of fact exist with respect to the Respondent's refusal to furnish this information.

<sup>1</sup> *Zeta Consumer Products Corp.*, 326 NLRB 293 (1998) (OSHA 200 logs); *Trustees of Masonic Hall*, 261 NLRB 436 (1982) (compensation and employment information); *Mobay Chemical Corp.*, 233 NLRB 109 (1977)(same).

Item 7's reference to the "Cost Report files with the AHCA" is not further explained in the record, but it appears that the Union was seeking financial information. The Board has held that financial information is not presumptively relevant and that the union must therefore demonstrate the relevance of the information. See *Troy Hills Nursing Home*, 326 NLRB 1465 (1998). Similarly, the Board has held that the subcontracting information sought in Item 8 is not presumptively relevant. *Associated Ready Mixed Concrete*, 318 NLRB 318 (1995), enf'd. 108 F. 3d 1182 (9th Cir. 1997). Here, neither the complaint nor the motion for summary judgment explain why the Respondent had an obligation to provide the cost and subcontracting information. We therefore deny the General Counsel's Motion for Summary Judgment with respect to the information requested in Items 7 and 8, and we remand those issues to the Regional Director for further appropriate action.

Accordingly, we grant the Motion for Summary Judgment, and we will order the Respondent to bargain and to furnish the requested information, with the exception of the cost and subcontracting information requested in Items 7 and 8.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, with an office and place of business at Margate, Florida, has been engaged in the business of providing laundry and housekeeping services to various nursing homes in the State of Florida, including Richmond Health Care d/b/a Sunrise Health and Rehabilitation Center, at 4800 Nob Hill Road, Sunrise, Florida. During the 12 months prior to issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000, and during that same time period purchased and received goods valued in excess of \$50,000 directly from points outside the State of Florida. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Certification*

Following the election held May 9, 1997, the Union was certified on July 22, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time laundry and housekeeping employees employed by Respondent at Richmond Health Care d/b/a Sunrise Health and Rehabilitation Center in Sunrise, Florida; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.<sup>2</sup>

#### B. *Refusal to Bargain*

Since January 21, 2000, the Union has requested the Respondent to recognize and bargain with it as the exclusive collective-bargaining representative of the unit, and to furnish information, and, since January 21, 2000, the

Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By refusing on and after January 21, 2000, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested by letters dated January 21 and June 28, 2000, with the exception of the cost and subcontracting information.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Health Care Services Group, Inc., Margate, Florida its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Refusing to bargain with 1115 Florida Division of 1199, Service Employees International Union, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if

<sup>2</sup> As alleged in the complaint and admitted in the Answer, on June 13, 2000, in Case 12-CA-39, the Regional Director for Region 12 of the Board, pursuant to stipulations executed by the Respondent and the Union, amended the certification issued in Case 12-RC-8066 to substitute the Union as the certified union with respect to the unit.

an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time laundry and house-keeping employees employed by Respondent at Richmond Health Care d/b/a Sunrise Health and Rehabilitation Center in Sunrise, Florida; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on January 21 and June 28, 2000, with the exception of the cost and subcontracting information.

(c) Within 14 days after service by the Region, post at its facility in Margate, Florida, and at the Sunrise Health and Rehabilitation Center facility in Sunrise, Florida, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 21, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the allegations in the complaint with respect to the information requested in Items 7 and 8 are remanded to the Regional Director for further appropriate action.

<sup>3</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with 1115 Florida Division of 1199, Service Employees International Union, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time laundry and house-keeping employees employed by us at Richmond Health Care d/b/a Sunrise Health and Rehabilitation Center in Sunrise, Florida; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on January 21 and June 28, 2000, with the exception of the cost and subcontracting information.

HEALTH CARE SERVICES GROUP, INC.